

LAW OFFICES OF
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

SIDNEY T. MILLER (1884-1940)
GEORGE L. CANFIELD (1888-1928)
LEWIS H. PADDOCK (1888-1935)
FERRIS D. STONE (1892-1945)

A PROFESSIONAL LIMITED LIABILITY COMPANY

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WASHINGTON, D.C. 20036

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JUL 23 1996

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GDANSK, POLAND
WARSAW, POLAND

July 23, 1996

BY HAND

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: IB Docket No. 95-59 - Preemption of Local Zoning
Regulation of Satellite Earth Stations

CS Docket No. 96-83 - Restrictions on Over-the-Air
Receptions Devices: Television Broadcast and
Multichannel Multipoint Distribution Service

Dear Mr. Caton:

Pursuant to 47 C.F.R. § 1.1206, I submit this original and one copy of a letter disclosing an oral ex parte conversation in connection with the above-referenced proceedings.

The undersigned and Kevin McCarty of the U.S. Conference of Mayors met with James Cothorp of Commissioner Quello's office today. The meeting dealt with local zoning authority regarding telecommunications facilities. The discussion addressed the issues

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FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
COMMISSIONER OF THE SECURITIES AND EXCHANGE COMMISSION
OFFICE OF THE SECRETARY

set forth in the enclosed letter, a copy of which was given to Mr. Cothorp at the meeting.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By

Tillman L. Lay

Enclosure

cc: James Cothorp
WAFS146577.1\099999-20030

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July 9, 1996

BY HAND

Meredith J. Jones
Chief, Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W.
Room 918A
Washington, D.C. 20554

Re: IB Docket No. 95-59 - Preemption of Local Zoning
Regulation of Satellite Earth Stations

CS Docket No. 96-83 - Restrictions on Over-the-Air
Reception Devices: Television Broadcast and Multichannel
Multipoint Distribution Service

Dear Ms. Jones:

In connection with the above-referenced proceedings, on behalf of the National League of Cities; the National Association of Telecommunications Officers and Advisors; and the National Trust for Historic Preservation ("League of Cities, et. al."), we hereby submit the following recommendations for a proposed rule implementing Section 207 of the Telecommunications Act of 1996.

1. The satellite preemption rule should be limited in scope to DBS antennas and, therefore, should reiterate the language of Section 207 of the Telecommunications Act of 1996, relating to DBS antennas.

2. There should be no presumptive preemption of local health, safety, historic, or aesthetic regulations affecting the installation, maintenance or use of such antennas.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Meredith J. Jones

July 9, 1996

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3. Parties believing that a particular local regulation impairs their ability to receive DBS, MMDS or off-the-air broadcast television service should be required to petition the Commission for review of local regulations on a case-by-case basis, with the burden on the petitioning party to prove that the regulation impairs his or her ability to receive service, and the burden on the state or local government to prove, as an absolute defense, that the challenged regulation serves a health, safety, historic, or aesthetic objective and is reasonably tailored to serve that objective.

4. "Impair" should be defined as expressly prohibiting or having the effect of prohibiting the receipt of service.

5. The following classes of local zoning, building, and land use regulations should be considered "safe harbors" that are immune to challenge:

a. Generally accepted health and safety regulations including, by way of example and not limitation, the BOCA National Building Code promulgated by the Building Officials & Code Administrators International, Inc., and the National Electrical Code promulgated by the National Fire Protection Association.

b. Generally applicable provisions of local zoning, building, and land use codes that do not single out DBS, MMDS, or television antennas for separate and disfavored treatment.

c. Zoning, building, and land use restrictions and designations relating to parks, wetlands, historic districts and sites designated as such by federal, state, or local laws and regulations should not be subject to review.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

If you have any questions regarding this matter, do not hesitate to contact me.

Very truly yours

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By

Tillman L. Lay

cc: William F. Caton
John Stern
Rosalee Chiara
Joseph Welsh
Jacqueline Spindler
Randi Albert
Ryan Wallach
John Logan
William Johnson